

CASES OF BEER



***Intellectual Property Series:
Cases of Beer –***

***Recent Intellectual Property and
Litigation Developments in the
Craft Beer and Distillery Industries***



LOMMEN ABDO

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CHRISTIE ROTHENBERG HEALEY

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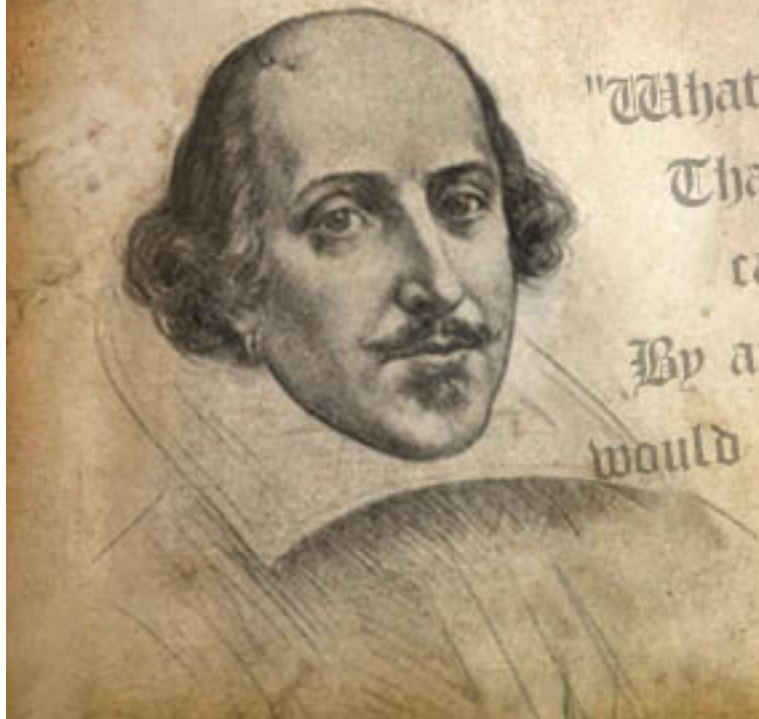
DAN SCHWARZ

LIFT BRIDGE CEO
PRESIDENT, MINNESOTA
CRAFT BREWERS GUILD

// FOR EXAMPLE //



What's in a name?

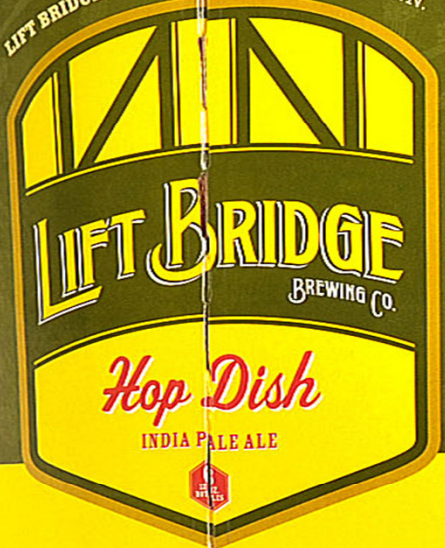


"What's in a name?
That which we
call a rose
By any other name
would smell as sweet."





BREWED and BOTTLED by
LIFT BRIDGE BREWING CO. STILLWATER, MINN.



LIFT BRIDGE
BREWING CO.

Hop Dish

INDIA PALE ALE



BREWERY TOURS!
Details at LiftBridgeBeer.com

ESTD. **LB** 2008

6
12 OZ.
BOTTLES

In the Northern tradition
of combining a variety
of ingredients perfectly,
our India Pale Ale mixes
together a bold recipe
that continues to satisfy.

A POTLUCK OF
SEVEN HOP VARIETIES



LIFT BRIDGE
BREWING CO.

It's A DECIDEDLY &
DELICIOUSLY HOPPY
← AMERICAN IPA

Hop Dish IPA



Supercool™

SuperServiceSM



PATENT PENDING

Trademark // Service Mark // Trade Name // Trade Dress

Trademark

TM ®

Identifies goods of a company.



Trademark // Service Mark // Trade Name // Trade Dress

Service Mark

SM ®

Identifies services of a company.



Trademark // Service Mark // Trade Name // Trade Dress

Trade Name

TM ®

Identifies the name of a company.



Trademark // Service Mark // Trade Name // Trade Dress

Trade Dress

TM ®

Consists of various elements use to promote a product or service, e.g., the packaging of the product.

It must be inherently distinctive, unless it has acquired a secondary meaning.



uspto.GOV

The United States Patent and Trademark Office
an agency of the Department of Commerce

Helpful 158

Application process

Searching Trademarks

Filing online

Disclosure of Public Information

Checking application status & viewing documents

Responding to Office Actions

Abandoned applications

Ordering certified documents

Trademark Trial and Appeal Board

NOTE: If you do not need to read information about searching, go directly to the search system [here](#).

Search Trademark Database

Although not required prior to filing an application, you are encouraged to search the USPTO's trademark database to see if any mark has already been registered or applied for that is similar to your mark **and** used on related products or for related services. If your search yields a mark that you think might conflict with your mark, you should then check status to see if the application or registration is still "live," since any "dead" mark cannot be used to block a new application.

A complete search is one that will uncover all similar marks, not just those that are identical. In this regard, searching for trademark availability is not the same as searching to register a domain name. A domain name search may focus on exact or "dead on" hits, with no consideration given to similar names or use with related products and services. Basically, a domain address is either available or it is not. The trademark process, on the other hand, is more complex. As part of the overall examination process, the USPTO will search its database to determine whether registration must be refused because a similar mark is already registered for related products or services (i.e., even identical marks may co-exist if used on goods or services not considered to be related in any way). Please note that the USPTO does **not** offer advisory opinions on the availability of a mark prior to filing of an actual application.

Depending on what trademark material you are looking for, there are a number of different areas to perform a Search:

Trademark Electronic Search System (TESS)

Use [Trademark Electronic Search System \(TESS\)](#) [**< This is a direct link to the search system**] to conduct a free online search of the USPTO database. TESS provides access to text and images of registered marks, and marks in pending and abandoned applications. The USPTO cannot provide guidance as to how you should search, beyond the HELP provided within the TESS site.

Design Search Code

If your mark includes a design element, you must search using a design code. The USPTO assigns all marks containing design figurative elements a 6-digit numerical code(s) for searching purposes. A design code search is also conducted using [TESS](#).

For assistance in searching with a design code, access the [Design Search Code Manual](#). This manual indexes the categories, divisions, and sections that make up these codes. For example, a five-pointed star would be coded in category 01 (celestial bodies, natural phenomena and geographical maps), division 01 (stars, comets) and section 03 (stars with five points), resulting in a complete design code of 01.01.03.

US Registration Certificates

Registration Certificates show or determine the ownership of a mark, the date first used in commerce, the registration and serial numbers, and the purposes the mark may be used in. The registration certificate may also be used to determine terms not claimed by an owner.

Public Search Facility

// TRADEMARK RIGHTS //

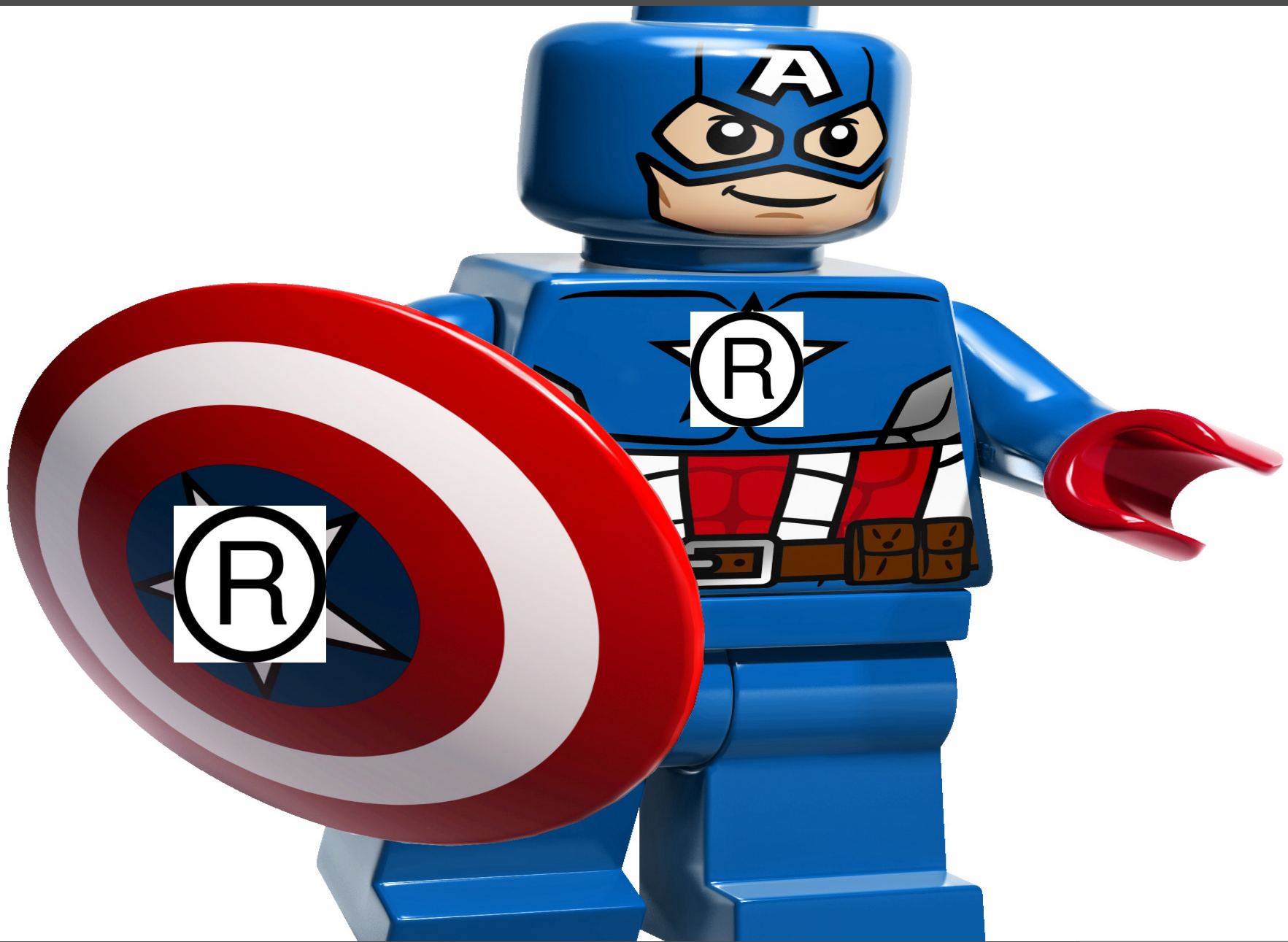
Common Law

Registration Benefits

Territorial

Importance





CASES OF BEER – WHERE TO PARTY

PRIVATE

AMICABLE RESOLUTION

USPTO

RESPONSE TO OFFICE ACTION

USPTO

OPPOSITION TO APPLICATION

USPTO

TRADEMARK TRIAL AND
APPEAL BOARD

U.S. DISTRICT COURTS

EXCLUSIVE JURISDICTION

Lift Bridge // USPTO



Lift Bridge v. USPTO

// FILING HISTORY //

▼ Trademark Documents ▼ Expand All			
Select All <input type="checkbox"/>	Create/Mail Date	Document Description	Document Type
<input type="checkbox"/>	Feb. 18, 2014	Registration Certificate	TIFF
<input type="checkbox"/>	Dec. 03, 2013	OG Publication Confirmation	XML
<input type="checkbox"/>	Nov. 13, 2013	Notice of Publication	XML
<input type="checkbox"/>	Nov. 13, 2013	Notification Of Notice of Publication	XML
<input type="checkbox"/>	Oct. 26, 2013	Publication & Issue Review Complete	MULTI
<input type="checkbox"/>	Oct. 09, 2013	Notation to File	XML
<input type="checkbox"/>	Oct. 09, 2013	TRAM Snapshot of App at Pub for Oppostn	MULTI
<input type="checkbox"/>	Sep. 18, 2013	Amendment and Mail Process Complete	MULTI
<input type="checkbox"/>	Sep. 16, 2013	Response to Office Action	MULTI
<input type="checkbox"/>	Jul. 22, 2013	TEAS Revoke Appointed Attorney	XML
<input type="checkbox"/>	Mar. 19, 2013	Notation to File	XML
<input type="checkbox"/>	Mar. 19, 2013	Offc Action Outgoing	MULTI
<input type="checkbox"/>	Mar. 19, 2013	XSearch Search Summary	XML
<input type="checkbox"/>	Nov. 29, 2012	Application	MULTI
<input type="checkbox"/>	Nov. 29, 2012	Drawing	JPEG
<input type="checkbox"/>	Nov. 29, 2012	Specimen	JPEG
▲ Proceedings Documents - Click to Load			
▲ Assignments Documents - Click to Load			

Lift Bridge v. USPTO

// LIKELIHOOD OF CONFUSION //

□ TEST

- Whether the purchasing public will mistakenly assume Lift Bridge's Commander beer are sponsored by or associated with Commandante wine.
- Confusion must be more than just possible, it must be likely.

□ FACTORS

- 13 factors under *DuPont*
- Two most important: (1) similarity of the marks and (2) similarity of the goods.



Lift Bridge v. USPTO

// SIMILARITY OF THE GOODS //

Beer Names

MAD HATTER (Reg. No. 3762096)

FULL CIRCLE (Reg. No. 850629926)

LIGHTHOUSE ALE (Reg. No. 3869270)

TWISTED X (Reg. No. 4010191)

BLIND FAITH (Reg. No. 2011128)

BLUE MOON (Reg. No. 3573073)

FULL MOON (Reg. No. 3028015)

GB (Reg. No. 2900750)

HARVEST MOON (Reg. No. 3573071)

Wine Names

MAD HATTER (Reg. No. 3459307)

FULL CIRCLE (Reg. No. 3537155)

LIGHT HOUSE (Reg. No. 1774380)

TWISTED RED (App. No. 77933949)

BLIND FAITH (Reg. No. 2859391)

BLUE MOON (Reg. No. 2224435)

FULL MOON (Reg. No. 3028015)

GB (Reg. No. 3706126)

HARVEST MOON (Reg. No. 2870111)

Lift Bridge v. USPTO

// SIMILARITY OF THE GOODS //

Beer Names

OBERON (Reg. No. 3013604)

DEVIL'S BACKBONE
(Reg. No. 3712371)

HOURGLASS ALE (Reg. No. 3661738)

RED CAR ALES (Reg. No. 2946083)

BLACKEYE ALE (Reg. No. 2667078)

CORONA (Reg. No. 1681366)

ALAMO (Reg. No. 2196136)

FREAK OUT! (Reg. No. 3499602)

Wine Names

OBERON (Reg. No. 3098799)

DEVIL'S BACKBONE WINE
(Reg. No. 3098870)

HOURGLASS (Reg. No. 2764766)

RED CAR (Reg. No. 2903476)

BLACKEYE ZIN (Reg. No. 3363470)

CORONAS (Reg. No. 1359598)

ALAMOS (Reg. No. 2783556)

FREAK OUT (Reg. No. 3126862)

Lift Bridge v. USPTO

// SIMILARITY OF THE MARKS //



CASES OF BEER – COMMON CLAIMS

- ❑ TRADEMARK INFRINGEMENT 15 U.S.C § 1114
- ❑ FALSE DESIGNATIONS OF ORIGIN 15 U.S.C § 1125(a)
- ❑ FEDERAL DILUTION OF TRADEMARK 15 U.S.C § 1125(c)
- ❑ COMMON LAW TRADEMARK INFRINGEMENT STATE LAW
- ❑ UNFAIR COMPETITION DECEPTIVE TRADE PRACTICES STATE LAW
- ❑ UNJUST ENRICHMENT STATE LAW

Lift Bridge v. Lucette Brewing



Long Trail v. Bent Paddle



MPAA v. 612 Brew



Lagunitas v. Sierra Nevada



Lagunitas
The Plaintiff

v.



Sierra Nevada
The Defendant

Magic Hat v. West Sixth



Bells v. Innovation



Slow Ride



Thirsty Dog v. Sleepy Dog

OLD LEGHUMPER[®]
Robust Porter

So many legs... So little time!

THIRSTY DOG[®]
BREWING COMPANY

This robust porter is dark brown in color and full bodied with a malty sweet taste. Deep roasted, yet silky smooth! Two types of roasted malts, including roasted chocolate malt give this beer it's award winning flavor. World Beer Cup GOLD Medalist 2002 and Bronze Medalist 2000.

Available All Year

IBU's - 24
O.G. - 16.5°P
6.7% alc./vol.

Available In:
6 Packs
1/2 BBLs.
1/6 BBLs.

SLEEPY DOG[®]
BREWERY

Tempe, AZ

SLEEPY DOG BREWERY
Come Visit our Tasting Room!
www.sleepydogbrewing.com
1920 E University Dr #104
Tempe, Arizona, 85281
480-967-5476

1 PINT,
6 FLUID OUNCES
ALE

LEG HUMPER
HEFEWEIZEN

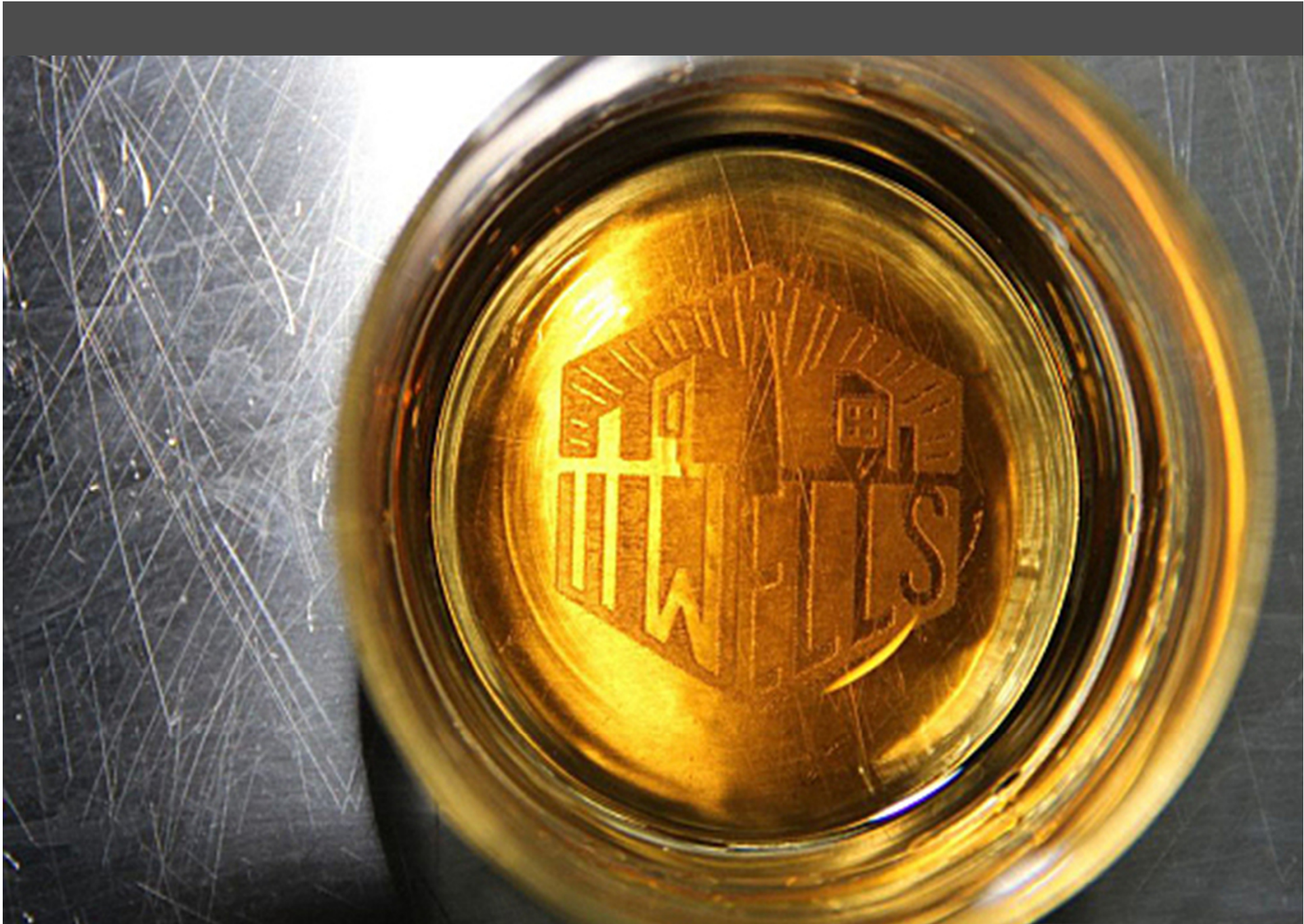
Red Bull v. Old Ox



COLLABORATION NOT LITIGATION

Ale





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